

EXHIBIT 10

Signed and Filed: July 2, 2012



DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

10 In re) Bankruptcy Case
11 FERMIN SOLIS ANIEL and ERLINDA) No. 09-30452DM
12 ABIBAS ANIEL,) Chapter 7
13)
14 Debtors.)
15)

ORDER DENYING MOTION TO VACATE ORDER

Debtors in this converted Chapter 7 case filed a voluntary petition under Chapter 11 on February 25, 2009. Their case was converted to Chapter 7 on their motion on August 2, 2010. On December 2, 2010, the court entered Debtors' Discharge (Docket No. 263). The Chapter 7 trustee filed a Report of No Distribution on February 3, 2011, and on February 4, 2011, the court entered a Final Decree and the case was closed.

Sixteen months later, on June 18, 2012, Debtors submitted a Certification of Debtors' Discharge (Docket No. 272) ("Certification"). In the first paragraph of the Certification, Debtors repeated the substance of the court's December 2, 2010, Discharge, reciting that ". . . debtors are granted a discharge under section 727 of Title 11, United States Code, (the "Bankruptcy Code")." But the Certification went on to do much

1 more, namely to discharge and declare void a deed of trust
2 securing a discharged debt on property they own in San Francisco.
3 Debtors did not serve the Certification on any affected creditor
4 or other parties in interest.

5 The purpose of the Certification plainly is to clear the deed
6 of trust from the property, the equivalent of a quiet title
7 action, yet Debtors did not pay a fee to reopen their case nor
8 commence an adversary proceeding to determine the validity of any
9 lien on their property (see Fed. R. Bankr. P. 7001(2) & (9)).

10 To dispose of this unusual and procedurally improper
11 proceeding, the court simply issued an Order Denying Debtors'
12 Requested Certifications Regarding Effect of Discharge On Secured
13 Debts on June 21, 2012 (Docket No. 271) ("Order Denying
14 Certification"). The court explained that under controlling
15 United States Supreme Court precedents, liens survive discharge in
16 Chapter 7 bankruptcy and, while in personam liability is
17 eliminated, the subject property remains burdened by the lien,
18 preserving for the holder a right to payment from the proceeds of
19 any sale of the property.

20 Incredibly, Debtors responded on June 28, with their Motion
21 To Vacate Sua Sponte Order On Certification Of Discharge (Docket
22 No. 274). In that motion Debtors recite that they "never expected
23 that this court in relation to debtors' prepared certificates
24 would issue a public order." As the docket in this case reflects,
25 Debtors are no strangers to bankruptcy process. More
26 specifically, all of their requests throughout this long case have
27 been dealt with by public responses on the court's docket. If
28 they did not expect the court to issue a public order, it is not

1 clear what they in fact expected to do with the Certification had
2 the court signed it.

3 Audaciously, the Debtors now recite that the court lacks
4 jurisdiction to issue the Order Denying Certification. They do
5 not explain how, if there was no jurisdiction to issue that order,
6 there might have been jurisdiction to issue the Certification.
7 Further, their motion to vacate is completely silent on the legal
8 principles recited in the Order Denying Certification. Instead,
9 they contend that the court should vacate its order with the
10 proposed Certification unsigned, leaving the debtors in the same
11 position had they never submitted the Certification. That is
12 exactly the situation resulting from the court's Order Denying
13 Certification, namely the deed of trust remains valid as against
14 their property. This episode of the Debtors' aggressive and
15 legally unsupportable request, and the court's response, proves
16 the adage "Be careful what you ask for."

17 The Motion To Vacate Sua Sponte Order On Certification Of
18 Discharge is DENIED.

19 **END OF ORDER**
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COURT SERVICE LIST

2 Fermin Solis Aniel
75 Tobin Clark Drive
3 Hillsborough, CA 94010

4 Erlinda Abibas Aniel
75 Tobin Clark Drive
5 Hillsborough, Ca 94010

6 BAC Home Loans Servicing, LP fka Countrywide Home
7105 Corporate Drive
7 PTX-B-35
Plano, TX 75024

8 Litton Loan Servicing, L.P.
9 Bankruptcy Department
10 4828 Loop Central Drive
11 Houston, TX 77081-2226

11 National City Bank
P.O. Box 94982
12 Cleveland, OH 44101

13 Aurora Loan Services, LLC
14 c/o McCarthy Holthus, LLP
14 1770 Fourth Avenue
14 San Diego, CA 92101

16 OneWest Bank, FSB
7700 W. Palmer, Bldg. D
Austin, Texas 78729

17 American Home Mortgage Servicing Inc.
18 4875 Belfort Road Suite 130
Jacksonville, Florida 32256

19 GMAC Mortgage, LLC
20 4375 Jutland Drive, Suite 200
P.O. Box 17933
21 San Diego, CA 92177-0933

22 HSBC Bank USA, National Association
C/o Pite Duncan, LLP
23 4375 Jutland Drive, Suite 200
P.O. Box 17933
24 San Diego, CA 92177-0933